

# Senate Study Bill 3098

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CO=CHAIRPERSONS KREIMAN  
AND MILLER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to civil actions involving victims of sexual  
2 abuse and pornography.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5485XC 81  
5 rh/je/5

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1 1 Section 1. NEW SECTION. 728A.1 SHORT TITLE.  
1 2 This chapter shall be known and may be cited as "The Sexual  
1 3 Abuse and Pornography Victims Compensation Act".  
1 4 Sec. 2. NEW SECTION. 728A.2 FINDINGS AND PURPOSE.  
1 5 1. The state has a legitimate interest in restricting the  
1 6 availability and dissemination of obscene material, if there  
1 7 is a danger of harm or actual harm to individuals or society  
1 8 such as the sexual exploitation of children by child  
1 9 pornography, the invasion of privacy and the home by indecent  
1 10 broadcasts, or the promotion of sexual abuse and sexual  
1 11 homicide by violent sexual material.  
1 12 2. Sexual crimes often leave lifelong psychological scars  
1 13 that may prevent the victim and the victim's family from  
1 14 leading normal lives.  
1 15 3. The state has a legitimate interest in protecting its  
1 16 citizens, especially children, from sexual crimes and in  
1 17 preventing such crimes through reasonable, effective, and  
1 18 constitutional means.  
1 19 4. The state has a legitimate interest in providing  
1 20 adequate compensation to the victims of sexual crimes for  
1 21 their physical injuries, including costs associated with  
1 22 medical and psychological treatment and continuing pain and  
1 23 suffering.  
1 24 Sec. 3. NEW SECTION. 728A.3 DEFINITIONS.  
1 25 For purposes of this chapter, "material", "minor", "obscene  
1 26 material", "sodomasochistic abuse", and "sex act" mean the  
1 27 same as defined in section 728.1.  
1 28 Sec. 4. NEW SECTION. 728A.4 CIVIL CAUSE OF ACTION.  
1 29 1. A victim of sexual abuse as defined in section 709.1, a  
1 30 representative of the estate of such a victim, or the guardian  
1 31 or survivors of such a victim may seek civil relief or damages  
1 32 against a producer, distributor, exhibitor, or seller of  
1 33 obscene material pursuant to this chapter regardless of  
1 34 whether the offense has been prosecuted or proven in a  
1 35 separate criminal proceeding.  
2 1 2. To recover pursuant to this section, a plaintiff must  
2 2 prove, by a preponderance of the evidence, all of the  
2 3 following:  
2 4 a. The victim was a victim of sexual abuse as defined in  
2 5 section 709.1 regardless of whether the offense has been  
2 6 prosecuted or proven in a separate criminal proceeding.  
2 7 b. The material is obscene material.  
2 8 c. The material was a proximate cause of the offense, by  
2 9 influencing or inciting the offender to commit the offense  
2 10 perpetrated against the victim or by enticing the victim to  
2 11 participate in the offense.  
2 12 d. The defendant is a producer or distributor of the  
2 13 material, or exhibited or sold the material to the sexual  
2 14 offender.  
2 15 e. The producer, distributor, exhibitor, or seller of the

2 16 material knew or should have known that such material was  
2 17 obscene material.

2 18 3. For purposes of this chapter, the finder of fact may  
2 19 reasonably infer that the obscene material was a proximate  
2 20 cause of the offense, by influencing or inciting the offender  
2 21 to commit the offense or by enticing the victim to participate  
2 22 in the offense, if any of the following are found:

2 23 a. Unusual similarities between the acts described or  
2 24 depicted in such material and the actual offense.

2 25 b. Testimony of the offender that such material influenced  
2 26 or incited the commission of the offense or enticed the victim  
2 27 to participate in the offense.

2 28 c. Testimony by an expert that such material influenced or  
2 29 incited the offender to commit the offense or enticed the  
2 30 victim to participate in the offense.

2 31 Sec. 5. NEW SECTION. 728A.5 RELIEF.

2 32 A victim of sexual abuse as defined in section 709.1, a  
2 33 representative of the estate of such a victim, or the guardian  
2 34 or survivors of such a victim may recover economic damages or  
2 35 obtain other appropriate relief, including injunctive or other  
3 1 equitable relief. If the person is the prevailing party, the  
3 2 person shall be awarded court costs, reasonable attorney fees,  
3 3 and expert witness fees which shall be taxed as part of the  
3 4 costs of the action.

3 5 Sec. 6. NEW SECTION. 728A.6 LIMITATION OF ACTIONS.

3 6 An action for damages for injury suffered as a result of a  
3 7 violation of this chapter shall be brought within six years  
3 8 after the right of action first accrued, except that such  
3 9 limitation shall be extended in favor of persons with mental  
3 10 illness and minors pursuant to section 614.8.

3 11 Sec. 7. Section 728.6, Code 2005, is amended to read as  
3 12 follows:

3 13 728.6 CIVIL SUIT TO DETERMINE OBSCENITY.

3 14 ~~Whenever the county attorney of any county~~ If the attorney  
3 15 ~~general~~ has reasonable cause to believe that any person is  
3 16 engaged or plans to engage in the dissemination or exhibition  
3 17 of obscene material within the county attorney's county to any  
3 18 person, including minors, the county attorney attorney general  
3 19 may institute a civil proceeding in the district court of the  
3 20 county on behalf of the state to enjoin the dissemination or  
3 21 exhibition of obscene material to any person, including  
3 22 minors. Such application for injunction is optional and not  
3 23 mandatory and shall not be construed as a prerequisite to  
3 24 criminal prosecution for a violation of this chapter.

3 25 EXPLANATION

3 26 This bill relates to civil actions involving victims of  
3 27 pornography and creates the pornography victims compensation  
3 28 Act.

3 29 The bill provides that a victim of sexual abuse as defined  
3 30 in Code chapter 709, a representative of the estate of any  
3 31 such victim, or the guardian or survivors of any such victim  
3 32 may seek civil relief or damages against a producer,  
3 33 distributor, exhibitor, or seller of obscene material  
3 34 regardless of whether the offense has been prosecuted or  
3 35 proven in a separate criminal proceeding.

4 1 The bill provides that to recover damages, a plaintiff must  
4 2 prove, by a preponderance of the evidence, that the victim was  
4 3 a victim of sexual abuse as defined in Code chapter 709  
4 4 regardless of whether the offense has been prosecuted or  
4 5 proven in a separate criminal proceeding, that the material  
4 6 used was obscene material and was a proximate cause of the  
4 7 offense by influencing or inciting the offender to commit the  
4 8 offense perpetrated against the victim or by enticing the  
4 9 victim to participate in the offense, that the defendant is a  
4 10 producer or distributor of the material, or exhibited or sold  
4 11 the material to the sexual offender, and that the producer,  
4 12 distributor, exhibitor, or seller of the material knew or  
4 13 should have known that such material was obscene material.  
4 14 The bill provides that the fact finder may reasonably infer  
4 15 that the obscene material was a proximate cause of the offense  
4 16 by influencing or inciting the offender to commit the offense  
4 17 or by enticing the victim to participate in the offense if  
4 18 unusual similarities between the acts described or depicted in  
4 19 such material and the actual offense are found, if the sexual  
4 20 offender testifies that such material influenced or incited  
4 21 the commission of the offense or enticed the victim to  
4 22 participate in the offense, or if expert testimony provides  
4 23 that such material influenced or incited the sexual offender  
4 24 to commit the offense or enticed the victim to participate in  
4 25 the offense.

4 26 The bill provides that a victim of sexual abuse as defined

4 27 in Code section 709.1, a representative of the estate of any  
4 28 such victim, or the guardian or survivors of any such victim  
4 29 may recover economic damages or obtain other appropriate  
4 30 relief including injunctive or other equitable relief. If the  
4 31 person is the prevailing party, the person shall be awarded  
4 32 court costs, reasonable attorney fees, and expert witness fees  
4 33 which shall be taxed as part of the costs of the action. The  
4 34 bill requires that such an action be brought within six years  
4 35 after the right of action first accrued, except that such  
5 1 limitation shall be extended in favor of persons with mental  
5 2 illness and minors.

5 3 For purposes of the bill, "material" means any book,  
5 4 magazine, newspaper or other printed or written material or  
5 5 any picture, drawing, photograph, motion picture, or other  
5 6 pictorial representation or any statue or other figure, or any  
5 7 recording, transcription or mechanical, chemical or electrical  
5 8 reproduction or any other articles, equipment, machines or  
5 9 materials; "minor" means any person under the age of eighteen;  
5 10 "obscene material" means any material depicting or describing  
5 11 the genitals, sex acts, masturbation, excretory functions or  
5 12 sadomasochistic abuse which the average person, taking the  
5 13 material as a whole and applying contemporary community  
5 14 standards with respect to what is suitable material for  
5 15 minors, would find appeals to the prurient interest and is  
5 16 patently offensive; and the material, taken as a whole, lacks  
5 17 serious literary, scientific, political or artistic value;  
5 18 "sadomasochistic abuse" means the infliction of physical or  
5 19 mental pain upon a person or the condition of a person being  
5 20 fettered, bound or otherwise physically restrained; and "sex  
5 21 act" means any sexual contact, actual or simulated, either  
5 22 natural or deviate, between two or more persons, or between a  
5 23 person and an animal, by penetration of the penis into the  
5 24 vagina or anus, or by contact between the mouth or tongue and  
5 25 genitalia or anus, or by contact between a finger of one  
5 26 person and the genitalia of another person or by use of  
5 27 artificial sexual organs or substitutes therefore in contact  
5 28 with the genitalia or anus.

5 29 The bill authorizes the attorney general to file a civil  
5 30 injunctive action to enjoin the dissemination or exhibition of  
5 31 obscene material to any person, including minors, upon  
5 32 reasonable case to believe that any person is engaged or plans  
5 33 to engage in the dissemination or exhibition of such obscene  
5 34 material. Current law allows a county attorney to file a  
5 35 civil injunctive action to enjoin the dissemination or  
6 1 exhibition of obscene material to minors within the county  
6 2 attorney's county.

6 3 The bill makes certain findings relating to the legitimate  
6 4 interest of the state in restricting the availability and  
6 5 dissemination of obscene material and in providing adequate  
6 6 compensation to the victims of sexual crimes for their  
6 7 physical injuries, including costs associated with medical and  
6 8 psychological treatment and pain and suffering.

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